

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|--------------------------|---|---------------------------|
| UNITED STATES OF AMERICA | § | |
| | § | |
| V. | § | Criminal No. H-09-00342-S |
| | § | |
| GILBERT LOPEZ and | § | Judge David Hittner |
| MARK KUHRT | § | |

MOTION FOR RELEASE PENDING SENTENCING
AND REQUEST FOR EVIDENTIARY HEARING

Comes now MARK KUHRT, by and through his attorney, and files this Motion for Release Pending Sentencing and Request for Evidentiary Hearing and would show this Court the following:

I.
BACKGROUND

On November 19, 2012, a jury convicted Mr. Kuhrt of conspiracy to commit wire fraud and nine substantive counts of wire fraud. The government, through counsel from the Department of Justice in Washington D.C. and lead counsel from the Southern District of Texas, did not move for detention pending sentencing and did not oppose Mr. Kuhrt remaining on conditions of release pending sentencing. Defense counsel agreed and stated that under any standard of proof there was insufficient evidence that Mr. Kuhrt was a flight risk or a danger to the community. This Honorable Court

disagreed with the parties and ordered Mr. Kuhrt remanded immediately into custody. See transcript excerpt at Attachment 1.

II. STATUTE

Under 18 U.S.C. § 3143(a), release is warranted where it is shown by clear and convincing evidence that Mr. Kuhrt "is not likely to flee or pose a danger to the safety of any other person or the community." Based on the record presented, Mr. Kuhrt meets these standards for release, and respectfully submits that this Court should grant his release pending sentencing.

III. RELEASED ON CONDITIONS

Mr. Kuhrt was arrested on June 19, 2009. On June 19, 2009, he was released on conditions with a \$100,000.00 bail bond and a \$10,000.00 cash deposit. Since that date, this court has granted three motions to travel and three motions to modify bond making travel less restrictive, and Mr. Kuhrt has always appeared at every court setting.

IV. ROOTS IN THE COMMUNITY - NOT A FLIGHT RISK

Mr. Kuhrt has roots in the Houston community. He has lived in Galveston County, Texas his entire life with the exception of attending the

University of Texas in Austin for 4 years, working in Birmingham. Alabama for 3 years, and St. Croix, Virgin Islands for 2 years. He has been married to his wife Melody for 17 years and has 4 daughters ages 2, 6 and 11 (twins), all of whom live in the Houston area. Please see attached affidavits of Melody Kuhrt and Gevonne Kuhrt.

Mr. Kuhrt upon his release has a job with Intergulf Corporation, where he was working until his remand. Please see attached letter of Brandon Velek.

Mr. Kuhrt has no criminal record whatsoever. Mr. Kuhrt complied with all conditions of pre-trial release, reported without issue during his release, and, upon information and belief, the Pre-trial Services Office has no information that Mr. Kuhrt is a flight risk.

There was no evidence at all introduced at trial that Mr. Kuhrt is a danger to anyone.

V.
THE COURT CAN MODIFY CONDITIONS

There are conditions of release that could be ordered that can assure the Court that Mr. Kuhrt is not a flight risk. His passport was surrendered over 3 years ago. The Court can also order the surrender of his wife's passport as a condition.

His mother as well as his wife agree to serve as a third party custodian should the Court grant release and order such a condition. The Court could order house arrest with GPS monitoring.

In sum, there are conditions of release that, when combined with the exemplary record of compliance established by Mr. Kuhrt to date, will assure the Court that Mr. Kuhrt will appear for sentencing on February 14, 2013, as directed.

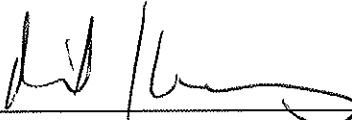
This Motion includes a request for an evidentiary hearing should the Court desire to hear the family members of Mr. Kuhrt testify under oath, and question Mr. Kuhrt himself, so that the Court can look them in the eye to satisfy itself that Mr. Kuhrt and his family are sincere that he will appear at sentencing should the Court order his release on modified conditions.

VI.

On November 27, 2012, counsel conferred with the Honorable Jason Varnado, Assistant United States Attorney, who opposes this Motion. It is noted that the Government did not oppose release in Court on the day of conviction.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that the Court will grant this Motion for Release Pending Sentencing and Request for an Evidentiary Hearing.

Respectfully submitted,



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VERIFICATION

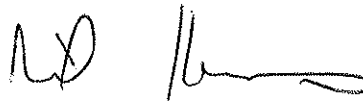
I, Mark Kuhrt, declare under penalty of perjury as provided by 28 U.S.C. § 1746, that I have read the foregoing MOTION FOR RELEASE PENDING SENTENCING AND REQUEST FOR EVIDENTIARY HEARING, and the facts stated therein are true and correct to the best of my knowledge and belief.

DATED: November 27, 2012


MARK KUHRT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of MARK KUHRT's Motion for Release Pending Sentencing and Request for Evidentiary Hearing was filed via ECF filing and a copy was sent to the Assistant United States Attorney and the Pre-Trial Services Officer by electronic mail on the 27th day of November 2012.



RICHARD KUNIANSKY

IN THE UNITED STATES DISTRICT COURT
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ORDER

A hearing on the Defendant's Motion for Release Pending Sentencing
is set for _____ m., on the ____ day of _____, 2012.

SIGNED on the _____ day of _____, 2012.

JUDGE PRESIDING

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

V.

GILBERT LOPEZ and
MARK KUERT

§
§
§
§
§

Criminal No. H-09-00342-S

Judge David Hittner

ORDER

The Defendant's Motion for Release Pending Sentencing is hereby:

_____ GRANTED, with the following conditions:

_____ DENIED To which ruling the Defendant
timely noted an exception.

SIGNED on the _____ day of _____, 2012.

JUDGE PRESIDING